APPEAL NO. 022522
FILED NOVEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 16, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____; that the appellant (carrier) waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021; and that the claimant had disability resulting from the injury sustained on _____, from April 12, 2002, through the date of the CCH. The carrier appeals on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

We affirm the hearing officer's determinations that the claimant sustained a compensable injury in the form of an occupational disease on _____, and that she had disability resulting from an injury sustained on _____, from April 12, 2002, through the date of the CCH. The issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

With regard to the waiver issue, the hearing officer correctly determined that the carrier waived the right to dispute compensability of the claimed injury by not contesting the injury in accordance with Section 409.021. In Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Texas Supreme Court determined that under Sections 409.021 and 409.022, a carrier that fails to begin benefit payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of injury has not met the statutory requisite to later contest compensability. On August 30, 2002, the Texas Supreme Court denied the motion for rehearing in the Downs case. Thus, the Downs decision, along with the requirement to adhere to the seven day "pay or dispute" provision of Section 409.021(a), became final. Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002.

The carrier contends that the Downs case is distinguishable from the instant case because it is an occupational disease issue and that the claimant represented on her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) that she first knew that the occupational disease may be related to her employment on April 11, 2002, a day after the carrier disputed compensability on April 10, 2002. We disagree with the carrier's contentions.

With regard to the occupational disease injury, the Downs case and Section 409.021 provide that the carrier shall initiate compensation no later than the seventh day after the date on which the carrier receives written notice of an injury. Section 401.011(26) states that "injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

With regard to the claimant's notice of her injury, the Employer's First Report of Injury or Illness (TWCC-1) dated March 29, 2002, reflects that the claimant listed the date of injury as "unknown-approx. 1 month" and that the nature of the injury was "possible-carpal tunnel." Additionally, the statements on the TWCC-1 are supported by the claimant's testimony that on March 28, 2002, she sought medical treatment from Dr. M and that Dr. M opined that her injury was work-related. The claimant stated that she reported her injury to her employer on March 29, 2001. The claimant was then referred to Dr. O and Dr. O diagnosed the claimant with carpal tunnel syndrome on April 10, 2002. The carrier contends that a second notice of injury form[1] dated May 13, 2002, represents that the claimant first knew that the occupational disease may be related to her employment on April 11, 2002, and that the claimant should not be allowed to misrepresent the date of injury and prevail on a technical defense. We disagree.

The Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) reflects that the carrier first received written notice of the claimant's claimed bilateral wrist injury on March 29, 2002, and that injury occurred on _____. The TWCC-21 is dated April 10, 2002, and in it the carrier disputes the "claim in its entirety"; that the "claimant did not suffer a compensable injury within the course and scope of employment"; that "there is no medical evidence that claimant sustained a repetitive trauma injury"; and that the "claimant did not report her alleged injury until 3/29/02 after she was warned of disciplinary action on 3/8/02 if no improvement which is considered a legitimate personal action." The TWCC-21 does not have a Texas Workers' Compensation Commission date-received stamp on it.

The evidence sufficiently supports the hearing officer's determination that the carrier first received written notice of the claimed injury on March 29, 2002, and that the carrier waived its right to contest the compensability of the claimed injury by not timely contesting an injury in accordance with Section 409.021. As such, the carrier has waived its right to contest the compensability of the claimed injury.

[1] Record does not indicate that the form is a TWCC-1.

Regarding the carrier's argument that there was no lost time after the alleged injury of _____, until April 8, 2002, the Appeals Panel has held that the fact that an injury is a no lost time accident does not relieve the carrier of its obligation to investigate and timely dispute a claim. *See* Texas Workers' Compensation Commission Appeal No. 93967, decided December 9, 1993.

Additionally, the carrier contends that it did not have proper and adequate notice since the TWCC-1 dated March 29, 2002, reflects a different name from the claimant. We note that the TWCC-1 dated March 29, 2002, reflects that the spouse's last name, "Young," is the same name as the claimant's last name, and that the employer's human resource director completed the TWCC-1. Furthermore, the identity of the claimant was not at issue at the CCH. It is well-settled that the Appeals Panel is limited to issues developed below and that we will not consider an argument raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 011288, decided July 19, 2001.

We affirm the decision and order of the hearing officer, as reformed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Michael B. McShane
Appeals Panel
Manager/Judge